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GOVERNOR

STATE OF MICHIGAN
EXECUTIVE OFFICE
LANSING

BRIAN CALLEY
LT. GOVERNOR

November 30, 2011

Michigan House of Representatives
State Capitol Building
Lansing, Michigan 48913

Ladies and Gentlemen:

Today I am returning to you Enrolled House Bill 4326 without signature. While I strongly support the bill's goal of reducing burdensome state regulations and have recently signed several bills that will have that desired effect, Enrolled House Bill 4326 would preempt state agencies from crafting any regulatory program that exceeds federal standards in order to meet the specific needs of Michigan's citizens, businesses, and natural resources. I am concerned that Enrolled House Bill 4326 would inhibit the state's ability to work with businesses and citizens to ensure that our regulatory structure fits Michigan's unique profile.

The extraordinary economic challenges confronting the state of Michigan provide us with a historic opportunity to create a regulatory reform environment that is fair, efficient, and conducive to attracting and maintaining business growth. That is why I issued Executive Order 2011-5, which calls upon the Department of Licensing and Regulatory Affairs, through its Office of Regulatory Reinvention (ORR), to engage stakeholders and regulators in a thoughtful and deliberative process to systematically review all rules, regulations, guidelines, and non-published regulatory policies. The ORR will provide me with recommendations on how to rewrite our regulatory rule book to create an environment that is conducive to economic growth.

A cursory historical review of Michigan's administrative records reveals several recent instances in which Michigan businesses and citizens have petitioned the administration to promulgate regulations that go beyond existing federal standards to meet the unique needs and protect the interests of Michigan citizens, businesses, and natural resources.

- Over the last decade or so, several MIOSHA rules have been promulgated at the behest of the Michigan business community that exceeded or differed from federal OSHA rules addressing similar issues or operations. Most have focused on workplace safety issues in Michigan's construction industry: rough terrain forklifts in construction; communication tower erection; lock out of injection molding machines; lifting and digging; provisions that allow riding the headache ball (in limited situations) for initial connectors; and masonry wall bracing.

- Michigan has prided itself on recognizing the uniqueness of the natural resources in areas such as ballast water standards and the Great Lakes Basin Compact. In both of those instances, the state went beyond federal standards to craft a regulatory program that more specifically highlighted and protected our distinctive natural resources. Michigan has shown the value of this approach with its ballast water treatment standard that allows for zero discharge of ballast water containing invasive species. This far exceeds Coast Guard and EPA standards that have failed to protect our waters as evidenced by the presence of more than 200 forms of invasive species.
- DEQ sets a more stringent standard for the discharge of phosphorous than federal law in order to better protect the Great Lakes and all of Michigan's waters from algae and aquatic weeds. This is critical to safeguarding our lakes and streams.
- DTMB's procurement rules differ in numerous ways from federal procurement rules, which are difficult to catalog. Some may be more stringent while others may be less. In some instances, more stringent rules actually benefit the business community. For example, state rules regarding bidder protest guidelines are specific and user friendly, while the federal rules are more vague and difficult to navigate.
- Michigan is currently the only state with mandatory ID on its cattle herd. This has allowed us to maintain market access and achieve TB-free status for 72 counties. This clearly exceeds federal standards, but is key to protecting our state's agricultural commodities, industry, and consumers.
- In the future there are areas where we would like to consider standards more strict than the federal government in areas of preventing fraud and abuse in our Medicaid system.

I believe Enrolled House Bill 4326 creates several other administrative problems. First, the bill would require the ORR to identify an "applicable federal standard" for every proposed state rule. This is a most difficult – if not practically impossible – task and would require subjective determinations that are inconsistent with the concept of a fair and objective regulatory process.

I am also concerned Enrolled House Bill 4326 casts doubt on existing Michigan rules and regulations as well as future rules that may be promulgated in the absence of any federal counterpart. Would the state be prohibited from crafting a regulatory program to meet its needs in an area of the law where the federal government had yet to promulgate an "applicable standard"? Enrolled House Bill 4326's outright ban constitutes an unacceptable flaw in the bill.

Finally, Enrolled House Bill 4326 would create statutory conflicts between the provisions of Michigan's Administrative Procedures Act of 1969, MCL 24.201 *et seq*, and the statutes that confer substantive rule-making authority on state agencies. The APA sets forth the process for rule promulgation in the state. The enabling statutes provide state agencies with the legal authority to promulgate rules to implement and run the programs they are required to oversee.

November 30, 2011

Page 3

Enrolled House Bill 4326 purports to implement an outright ban on certain rules within the APA but cannot, under Article 4, Section 25 of the Michigan Constitution, amend the terms of the substantive statutes that confer regulatory authority upon state agencies. Such statutory confusion and conflict between these various state laws constitutes a serious flaw in the bill.

The Legislature remains free to draft statutes that specifically repeal burdensome agency regulations. I welcome such efforts.

In summary, Enrolled House Bill 4326 attempts to send the right message but does so in the wrong way. Its overly broad prohibition preempts necessary administrative flexibility. Regulatory reform is a priority of my administration and will continue to be through Executive Order 2011-5's call for a systematic review and evaluation of all state regulations to yield a fair and efficient regulatory framework for the state. Enrolled House Bill 4326, on the other hand, invites greater uncertainty in our regulatory environment. Therefore, I am returning Enrolled House Bill 4326 without signature.

My actions today, taken together with the signing of Enrolled House Bills 4017, 4042, 4043, 4500, and 4573, send the message that I am committed to working with the Legislature to enact the right kind of regulatory reform--the kind that will result in a simple, fair, and efficient regulatory environment in the state. I commend the Legislature for its action on these proposals, and look forward to working with you to continue our work in enacting additional regulatory reforms to simplify the regulatory environment of the state for the betterment of the lives and livelihoods of our citizens and protection of our natural resources, businesses, and economy.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Snyder", written in a cursive style.

Rick Snyder
Governor

